

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

GEORGIA ANNE WHITAKER

Registered Nurse License No. 488770

Petitioner.

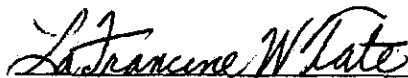
OAH No. 2008010796

DECISION

The attached Decision of the Board of Registered Nursing is hereby adopted by the Board as its Decision in the above-entitled matter.

This Decision shall become effective on April 18, 2008.

IT IS SO ORDERED this 20th day of March 2008.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of Revoked License of:

GEORGIA ANNE WHITAKER,

Petitioner.

OAH No. 2008010796

DECISION

This matter was heard before a quorum of the Board of Registered Nursing in Emeryville, California, on February 21, 2008. Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Hannah Hirsch Rose, Deputy Attorney General, represented the Department of Justice, Office of the Attorney General.

Petitioner Georgia Anne Whitaker represented herself.

FACTUAL FINDINGS

1. Petitioner Georgia Anne Whitaker was issued registered nurse license number 488770 on March 31, 1993. Following an administrative hearing, petitioner's license was revoked effective December 8, 2004, in case number 2004-301. Upon findings that petitioner had been convicted of five crimes between April 2002 and April 2003 – assault, vandalism, battery on a peace officer, maintaining an unlawful building for the manufacture, storage or distribution of controlled substances, and child endangerment – petitioner's license was revoked pursuant to Business and Professions Code sections 2761, subdivision (f) (conviction of a substantially related crime) and 2762 (unprofessional conduct). Petitioner was ordered to reimburse the board \$3,740 for the costs of investigation and prosecution.

2. All of petitioner's crimes related to her substance abuse. Petitioner's primary drug of choice was alcohol, but she also had some use of methamphetamine. At the time of the administrative hearing in September 2004, petitioner was complying with the terms of her criminal probation, had been attending AA meetings for about nine months, and had been clean and sober for one month, since August 3, 2004. Petitioner has continued to maintain her sobriety since that date. She successfully completed her criminal probation on April 2, 2007. She has attended AA meetings almost daily for the past four years, and sometimes attends more than one meeting per day. Petitioner has an AA sponsor and she serves as a sponsor herself. She is very active in AA, serving as treasury assistant for one weekly

meeting and on the activities committee where she helps plan dances and community service events. Petitioner views AA not as a program, but as "a way of life."

3. Between October 2005 and July 2007, when the program lost its county funding, petitioner worked for Anka Behavioral Health, Inc. She worked in the out-patient treatment program where she was promoted to a team leader responsible for maintaining a 12-bed supported housing program. Her duties included case management, treatment planning, safety monitoring and medication compliance.

4. Petitioner worked as a transplant nurse and is interested in returning to that field if her license is restored.

LEGAL CONCLUSIONS

Petitioner established to the satisfaction of the board that it would not be against the public interest to reinstate her registered nurse license upon appropriate terms and conditions. Because of petitioner's history of substance abuse, those conditions must include those related to drug and alcohol use.

ORDER

The petition of Georgia Anne Whitaker for reinstatement of licensure is hereby granted. Registered nurse license number 488770 is reinstated. The license shall be immediately revoked, the order of revocation stayed, and petitioner placed on probation for a period of three years on the following conditions:

SEVERABILITY CLAUSE – Each condition of probation contained herein is a separate and distinct condition. If any condition of this order, or any application thereof, is declared *unenforceable in whole, in part, or to any extent, the remainder of this order, and all other applications thereof, shall not be affected.* Each condition of this order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS - Petitioner shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by petitioner to the board in writing within 72 hours of occurrence. To permit monitoring of compliance with this condition, petitioner shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If petitioner is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Petitioner shall fully comply with the conditions of the probation program established by the board and shall cooperate with representatives of the board in its monitoring and investigation of petitioner's compliance with the board's probation program. Petitioner shall inform the board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the board, including during any period of suspension.

Upon successful completion of probation, petitioner's license shall be fully restored.

(3) REPORT IN PERSON - Petitioner, during the period of probation, shall appear in person at interviews/meetings as directed by the board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Petitioner's probation is tolled if and when she resides outside of California. Petitioner must provide written notice to the board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Petitioner shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Petitioner shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Petitioner shall inform the board if she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS - Petitioner, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the board. These reports/declarations shall contain statements relative to petitioner's compliance with all the conditions of the board's probation program. Petitioner shall immediately execute all release of information forms as may be required by the board or its representatives.

Petitioner shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Petitioner, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the board.

For purposes of compliance with this section, “engage in the practice of registered nursing” may include, when approved by the board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the board.

If petitioner has not complied with this condition during the probationary term, and petitioner has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of petitioner’s probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS -

Petitioner shall obtain prior approval from the board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Petitioner shall cause to be submitted to the board all performance evaluations and other employment related reports as a registered nurse upon request of the board.

Petitioner shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, petitioner shall notify the board in writing within 72 hours after she obtains any nursing or other health care related employment. Petitioner shall notify the board in writing within 72 hours after she is terminated or separated, regardless of cause, from any nursing or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Petitioner shall obtain prior approval from the board regarding petitioner’s level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Petitioner shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Petitioner’s level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum – The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate – The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours petitioner works.
- (c) Minimum – The individual providing supervision and/or collaboration has person-to-person communication with petitioner at least twice during each shift worked.
- (d) Home Health Care – If petitioner is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with petitioner as required by the board each work day. Petitioner shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the board, periodic on-site visits to patients' homes visited by petitioner with or without petitioner present.

(9) EMPLOYMENT LIMITATIONS - Petitioner shall not work for a nurse's registry, a temporary nurse placement agency, an in-house nursing pool, in any private duty position as a registered nurse, or as a traveling nurse.

Petitioner shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the board. Petitioner shall not work in any other registered nursing occupation where home visits are required.

Petitioner shall not work in any health care setting as a supervisor of registered nurses. The board may additionally restrict petitioner from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Petitioner shall not work as a faculty member in an approved school of nursing or as an instructor in a board-approved continuing education program.

Petitioner shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If petitioner is working or intends to work in excess of 40 hours per week, the board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Petitioner, at her own expense, shall enroll in and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Petitioner shall obtain prior approval from the board before enrolling in the course(s). Petitioner shall submit to the board the original transcripts or certificates of completion for the above required course(s). The board shall return the original documents to petitioner after photocopying them for its records.

(11) COST RECOVERY - Petitioner shall pay to the board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$3,740. Petitioner shall be permitted to pay these costs in a payment plan approved by the board, with payments to be completed no later than three months prior to the end of the probation term.

If petitioner has not complied with this condition during the probationary term, and petitioner has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If petitioner violates the conditions of her probation, the board after giving petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of petitioner's license.

If during the period of probation an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the board.

(13) LICENSE SURRENDER - During petitioner's term of probation, if she ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the conditions of probation, petitioner may surrender her license to the board. The board reserves the right to evaluate petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of petitioner's license history with the board. A registered nurse whose license has been surrendered may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- 1) Two years for reinstatement of a license that was surrendered

for any reason other than a mental or physical illness; or

- 2) One year for a license surrendered for a mental or physical illness.

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, petitioner, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the board before the assessment is performed, submit an assessment of petitioner's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the board. If medically determined, a recommended treatment program will be instituted and followed by petitioner with the physician, nurse practitioner, or physician assistant providing written reports to the board on forms provided by the board.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the board and petitioner by telephone, and the board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and shall not resume practice until notified by the board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the board is required until the board has notified petitioner that a medical determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the board. This period of suspension will not apply to the reduction of this probationary time period. The board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Petitioner, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the board. If petitioner has not completed a board-approved treatment/rehabilitation program prior to commencement of probation, petitioner, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the board shall consider petitioner in violation of probation.

Based on board recommendation, each week petitioner shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Petitioner shall submit dated and signed documentation confirming such attendance to the board during the entire period of probation. Petitioner shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Petitioner shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Petitioner shall have sent to the board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, petitioner's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Petitioner shall identify for the board a single physician, nurse practitioner or physician assistant who shall be aware of petitioner's history of substance abuse and will coordinate and monitor any prescriptions for petitioner for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the board on a quarterly basis petitioner's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(17) SUBMIT TO TESTS AND SAMPLES - Petitioner, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the board approves. The length of time and frequency will be subject to approval by the board. Petitioner is responsible for keeping the board informed of petitioner's current telephone number at all times. Petitioner shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the board, as directed. Any confirmed positive finding shall be reported immediately to the board by the program and petitioner shall be considered in violation of probation.

In addition, petitioner, at any time during the period of probation, shall fully cooperate with the board or any of its representatives, and shall, when requested,

submit to such tests and samples as the board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If petitioner has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the board files a petition to revoke probation or an accusation, the board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, petitioner shall immediately cease practice and shall not resume practice until notified by the board. After taking into account documented evidence of mitigation, if the board files a petition to revoke probation or an accusation, the board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(18) MENTAL HEALTH EXAMINATION - Petitioner shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the board. All costs are the responsibility of petitioner. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by petitioner.


If petitioner is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the board and petitioner by telephone, and the board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and may not resume practice until notified by the board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the board is required, until the board has notified petitioner that a mental health determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the board. This period of suspension will not apply to the reduction of this probationary time period. The board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such

evidence must establish good faith efforts by petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(19) THERAPY OR COUNSELING PROGRAM - Petitioner, at her expense, shall participate in an on-going counseling program until such time as the board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: March 20, 2008



LaFRANCINE TATE

President

Board of Registered Nursing

Department of Consumer Affairs

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GEORGIA WHITAKER aka
GEORGIA ANNE MARLOWE
33785 Milan Road
Hemet, CA 92545

Case No. 2004-301

OAH No. L2004060339

Registered Nurse License No. 488770

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on December 8, 2004.

IT IS SO ORDERED November 8, 2004.

Sandra L. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

GEORGIA WHITAKER aka
GEORGIA ANNE MARLOWE
33785 Milan Road
Hemet, CA 92545

Registered Nurse License No. 488770,

Respondent.

Case No. 2004-301

OAH No. L2004060339

PROPOSED DECISION

On September 9, 2004, in San Diego, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Ronald A. Casino, Deputy Attorney General, represented the complainant Board of Registered Nursing.

Respondent was present and represented herself.

The record was opened, evidence was taken and the matter was closed and submitted for decision on September 9, 2004.

FACTUAL FINDINGS

1. The Accusation was filed by Ruth Ann Terry, M.P.H., R.N., in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. Respondent Georgia Whitaker has been licensed by the Board of Registered Nursing since 1993. On March 31, 1993 the Board issued registered nurse license number

488770 to respondent Whitaker. This license has been in full force and effect since that time and will expire, unless renewed, on April 30, 2005. This license has not been the subject of any prior license discipline.

3. The Board of Registered Nursing is the agency in the State of California charged with the licensure and discipline of nurses and has an obligation, under the law, to protect the public of the state from exposure to nursing care that places the public at risk of harm.

4. Respondent suffered three separate criminal convictions in the last two years. These convictions are as follows:

A. On or about April 4, 2002 respondent was convicted by her plea of guilty to violating Penal Code sections 245, subdivision (a)(1)-Assault and 594, subdivision (b)(1)-Vandalism in the Superior Court, County of Riverside, State of California in case number HEF005099. *Both were misdemeanors.*

The facts and circumstances of this conviction are that on February 2, 2002 respondent committed an assault on another by means of force likely to produce great bodily harm and destroy her property. As a result of this conviction respondent was placed on three years formal probation, ordered to serve 90 days in custody, ordered to pay a fine in the amount of \$110 and restitution of \$100, have no contact with the victim, and not own or possess any firearm or deadly weapon.

B. On April 3, 2003, respondent was convicted by her plea of guilty of violating Penal Code section 243, subdivision (b)-Battery on a Police Officer, in the Superior Court of the State of California, County of Riverside in case number SWM011234. This was a misdemeanor.

The facts and circumstances of this conviction are that on September 4, 2002 respondent used force and violence on an Animal Control Officer, a peace officer engaged in the performance of his duties. Respondent was sentenced to 30 days in jail. Probation was denied.

C. On April 3, 2003, respondent was convicted by her plea of guilty to violating Health and Safety Code section 11366.5-Maintain Unlawful Building for Manufacture, Storage or Distribution of a Controlled Substance and Penal Code section 273A, subdivision (a)-Child Endangerment, both felonies in the Superior Court of the State of California, County of Riverside in case number SWF001090.

The facts and circumstances surrounding this conviction are that respondent maintained an unlawful building for the manufacture, storage or distribution of methamphetamine. This volatile and dangerous and illicit chemical lab placed respondent's young seven-year-old daughter at risk. Respondent was placed

on four years formal probation, ordered to serve 360 days in county jail, ordered to pay a fine of \$135, ordered not to possess or use any controlled substances, ordered to submit to chemical tests or blood tests or urine tests, participate in a counseling rehabilitation program and ordered to complete a Child Abuser's Program.

5. Respondent lives alone in Hemet, California and works as an emergency room nurse at Valley Plaza Doctor's Hospital in Perris, California. She is married to Thomas Whittaker but is not currently living with him because she is seeking reunification with her 8-year-old daughter who was removed from her custody by child protective services due to the child endangerment conviction. She is clean and sober at present and wishes very much to keep her nursing license. She is now working an active program of recovery through Narcotics Anonymous.

6. Respondent acknowledges her criminal convictions. She accepts responsibility for them. She has no excuses although she has a long and twisted family history of alcoholism and abuse that does shed light on how she got to where she is.

7. Respondent has five children. All are adults now except for her 8-year-old daughter. She was the child of an alcoholic father and a depressed mother. Her father died at 58 of complications of alcoholism and spent a fair amount of his time in prison. Respondent had five brothers and sisters. Of the six children, five became alcoholics. Respondent was first married at 16. At age 24, her husband committed suicide leaving her with a five-year-old child and no career.

8. Respondent remarried and had three children with husband number two over the next eight years. There was much alcohol and violence in the marriage and she divorced him when she was 32. She decided to pursue her dream of being a nurse and despite being a single mother of four, she enrolled in college and completed classes to get her RN degree.

9. Respondent got her license from the BRN in 1993 and moved to Riverside. She became pregnant with child number five after a brief relationship, but decided to keep the child because in her own words "God gave her to me."

10. Respondent has had a very difficult and challenging life and has made some very bad choices. Only in the last eight months has she begun to truly understand that her substance abuse problems have so damaged her and her family. She is finally showing some insight into the consequences of her substance abuse. She is now in an active 12 step program and has completed a child abuse program to improve her parenting skills.

11. Although respondent is showing positive signs as a result of her efforts at sobriety, she still has a long way to go. Her sobriety is in its infancy. She remains on criminal probation for the next three years. Her life has been characterized by chaos and instability for decades. The chaotic nature of it came to a head in 2002 with a rash of criminal convictions. Her criminal convictions, especially for her involvement with a

methamphetamine lab and child endangerment, are absolutely inconsistent with the holding of a license in such a sensitive setting as nursing.

12. Rehabilitation is not an event but rather a process. The opportunity at a second chance has long and deep roots in our culture and our law. We do not insist that people wear the scarlet letter for a lifetime. But the opportunity at a second chance does not come automatically, simply earned with the passage of time. Rather, we all must earn our second chance. This is the core of the notion of rehabilitation. Society takes it as a given that we all make mistakes, some larger than others. When our mistakes are social mistakes, breaches of the criminal law, for example, society imposes certain disabilities on us. We are penalized for our conduct by incarceration, fines, probation, community service, etc. Implicit in this set of disabilities imposed by society is a deeper truth. Society no longer trusts us completely. We have lost, at least temporarily, the trust of the community that we can do the tasks of citizenship without some oversight, some monitoring. Furthermore, depending on the social breach and depending on one's job, society may say that the breach is such that one can't be trusted to continue working in a particular area. The social breach is inconsistent with the particular type of work one is engaged in.

13. Rehabilitation is a process by which an individual earns back the trust of the community. It is composed of two very different modes of change. The first is attitudinal and involves the demonstration of a change of mind and heart. The second involves changes in behavior. To establish the change of mind and heart, one must come to terms with the underlying criminal behavior. One must demonstrate an awareness and understanding that it was wrong and that it was harmful. One must accept responsibility for the actions, not blaming it on others or excusing it. One must, in a word, show remorse. To establish a change in behavior, one must demonstrate a track record of consistently appropriate behavior over an extended period of time. In this way, society has the benefit of making a considered judgment with sufficient evidence.

14. There is no specific formula to establish rehabilitation. Each case must be evaluated on its own unique set of factors. Depending on what the stakes are, society may ask for a more compelling demonstration of rehabilitation from some than others. This is particularly so in these cases: Accusations seeking revocation of an RN license due to involvement with alcohol and illicit drugs. It may be that a simple statement of a person that they have "figured things out" coupled with a testimonial letter from their minister or therapist would be sufficient in some settings, but not here.

15. The California Board of Registered Nursing is charged with licensing and regulating a broad variety of endeavors all linked by one common thread. The populations that are taken care of by licensees are all needy and vulnerable. They range from the infant to the elderly and include those who are infirm both physically and psychologically. Many are developmentally disabled and are uniquely at risk to be taken advantage of and harmed by the unscrupulous, the dishonest or the uncaring. Many of those cared for by licensees cannot even speak the simple words necessary to ask for help. They cannot even say that someone is hurting them. Nurses are integral to the health care enterprise and must be trustworthy and honest and possess sound judgment. For this reason alone, the Board must

scrupulously evaluate all such claims with an eye toward its paramount duty of public protection but at the same time acknowledging individual due process rights and the strong public policy in giving deserving people a second chance.

16. The issue here is not whether respondent has sustained criminal convictions. The convictions are not disputed; nor does respondent deny that her out-of-control behavior led to serious problems. The issue is what is the appropriate action to take consistent with the overriding goal of public protection. Based upon the totality of the circumstances, respondent has not established that she has done the things that are required to keep her license. She has embarked on a rehabilitative journey but there is insufficient evidence of a track record of consistently appropriate behavior.

17. It was established that the complainant incurred actual costs in the amount of \$8,470.25 for the investigation and prosecution of this action. However, this was a paper case consisting of criminal conviction documents. It may well be that this large cost amount is justified but on the basis of this record and on the basis of the type of case this is, it does not appear reasonable. Reasonable costs are eight hours for investigation totaling \$960 and 20 hours of Attorney General time totaling \$2,780. Total reasonable costs are \$3,740.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2750 provides in relevant part that the Board may discipline any licensee, including a licensee holding a temporary or inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

2. Business and Professions Code section 2761 states:

“The Board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following
...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of conviction shall be conclusive evidence thereof.”

3. Business and Professions Code section 2762 states that:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act]. It is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.”

4. It was established by clear and convincing evidence that respondent Georgia Whitaker, aka Georgia Anne Marlowe, has subjected her license to discipline under Business and Professions Code section 2761, subdivision (f) in that she was convicted of crimes that are substantially related to the qualifications, functions and duties of a licensee as defined in California Code of Regulations, title 16, section 1444, subdivision (e) by virtue of Factual Findings 1-17.

5. It was established by clear and convincing evidence that respondent has subjected her license to discipline under Business and Professions Code section 2762 by virtue of Factual Findings 1-17.

6. The Board of Registered Nursing properly investigated and properly filed the Accusation herein as part of its statutory obligation to protect the public from impaired or potentially impaired practitioners. The Board was appropriately carrying out its duties in insisting that this matter proceed to a full evidentiary hearing on the Accusation. Cases involving drug or alcohol abuse often require an opportunity to place respondents and other witnesses under oath and expose them to the rigors of cross examination. The Factual Findings, Legal Conclusions and Order could not have been properly made without the opportunity to assess the demeanor and the credibility of the respondent under oath.

7. Decisions regarding the Order following an Accusation hearing involve the exercise of discretion by the Administrative Law Judge sitting on behalf of a particular administrative agency. Under Government Code section 11424.50, subdivision (c), Factual Findings shall be based exclusively on the evidence of record and on matters officially noticed. Most importantly, “The presiding officer’s experience, technical competence, and specialized knowledge may be used in evaluating evidence.”

8. One of the recurring issues in disciplinary cases heard by the ALJs of the California Office of Administrative Hearings relates to substance abuse. The harm caused by alcohol and drug abuse is well documented and causes unnecessary social costs that run to the billions of dollars every year. These astronomical financial costs do not begin to cover the personal and human costs involved to families and communities from the harm caused by substance abuse. The potential for harm in the health care field from impaired practitioners is obvious. Agencies such as the Board of Registered Nursing or the California Medical Board must be ever vigilant in removing from practice those who pose immediate risk of harm to the public from their substance abuse. Furthermore, they must be careful to assess and evaluate those who in the past have had problems with drugs or alcohol, lest a prior problem resurface and place the public at risk.

9. Cause to impose discipline on respondent has been established as a matter of law. Respondent has stopped abusing illegal drugs and appears motivated to change. However, insufficient time has elapsed in her recovery for this to outweigh the quantum of negative evidence in this case. Her convictions are recent and serious and they are not consistent with licensure.

10. Costs have been sought in this case pursuant to Business and Professions Code section 125.3. Actual costs were found to be \$8,470.25. This is a paper case in that the violations were established and proved by the introduction of a certified copy of the criminal conviction in evidence. The criminal conviction was not disputed by respondent. As such there is no showing of reasonableness to justify the award of such a cost request. Reasonable costs in this case, based upon trying lawsuits as an attorney in the State of California for 17 years and hearing these types of cases for the last 15 years, are assessed at \$3,740.

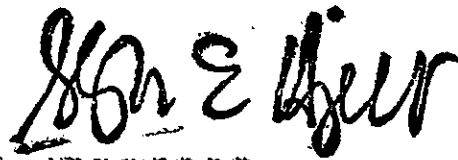
ORDER

1. Registered nurse License Number 488770 issued to Georgia Whitaker, aka Georgia Anne Marlowe, is revoked.

2. Respondent shall reimburse the Board of Registered Nursing the amount of \$3,740 for the actual and reasonable costs of investigation and enforcement of this action pursuant to Business and Professions Code section 125.3.

DATED: _____

9/17/04



STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings

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8 Attorneys for Complainant
9
10

11 **BEFORE THE**
12 **BOARD OF REGISTERED NURSING**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

14 In the Matter of the Accusation Against:

Case No. *2004-301*

15 **GEORGIA WHITAKER aka**
16 **GEORGIA ANNE MARLOWE**
33785 Milan Road
Hemet, California 92545

A C C U S A T I O N

17 Registered Nurse License No. 488770
18

19 Respondent.
20

Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs.

25 2. On or about March 31, 1993, the Board of Registered Nursing issued
26 Registered Nurse License Number 488770 to GEORGIA WHITAKER (Respondent). The
27 original license was issued in the name of Georgia Anne Marlowe. The Registered Nurse
28 ///

1 License was in full force and effect at all times relevant to the charges brought herein and will
2 expire on April 30, 2005, unless renewed.

3 **JURISDICTION**

4 3. This Accusation is brought before the Board of Registered Nursing
5 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 4. Section 2750 of the Business and Professions Code ("Code") provides, in
8 pertinent part, that the Board may discipline any licensee, including a licensee holding a
9 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
10 2750) of the Nursing Practice Act.

11 5. Section 2761 of the Code states:

12 "The board may take disciplinary action against a certified or licensed nurse or
13 deny an application for a certificate or license for any of the following:

14 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

15 "...

16 "(f) Conviction of a felony or of any offense substantially related to the
17 qualifications, functions, and duties of a registered nurse, in which event the record of the
18 conviction shall be conclusive evidence thereof.

19 6. Section 2762 of the Code states:

20 "In addition to other acts constituting unprofessional conduct within the meaning
21 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
22 under this chapter to do any of the following:

23 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
24 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
25 or administer to another, any controlled substance as defined in Division 10 (commencing with
26 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
27 defined in Section 4022."

28 7. Section 118, subdivision (b), of the Code provides that the

1 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
2 jurisdiction to proceed with a disciplinary action during the period within which the license may
3 be renewed, restored, reissued or reinstated.

4 8. Section 125.3 of the Code provides, in pertinent part, that the Board may
5 request the administrative law judge to direct a licentiate found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 9. Health and Safety Code Section 11350(a) provides, in pertinent part, that
9 every person who possesses any controlled substance shall be punished by imprisonment in the
10 state prison.

11 10. **DRUGS**

12 "Methamphetamine" is a Schedule II controlled substance as designated by Health
13 and Safety Code section 11055.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(CONVICTION OF A CRIME)**

16 11. Respondent is subject to disciplinary action under section 2761(a) and (f)
17 in that on or about April 4, 2002, Respondent pled guilty to violating Penal Code section
18 245(a)(1)-Assault and Penal Code section 594(b)(1)-Vandalism, misdemeanors, in the case
19 entitled, Superior Court of the State of California, County of Riverside, *People of the State of*
20 *California v. Georgia Anne Whitaker, aka Georgia Anne Kasulka, aka Georgia Anne Marlowe*,
21 Case No. HEF005099. The circumstances are as follows:

22 12. On or about February 2, 2002, Respondent did wilfully and unlawfully
23 commit an assault upon G.R. by means of force likely to produce great bodily injury and
24 destroyed her property. Respondent was placed on 3 years formal probation, ordered to serve 90
25 days custody, ordered to pay a fine in the amount of \$110.00, ordered to pay a restitution fine in
26 the amount of \$100.00, ordered to pay restitution to the victim, ordered not to have any contact
27 with the victim, ordered not to own or possess any firearm or deadly weapon, ordered to pay

28 ///

1 probation supervision costs, ordered to submit to a search at any time by a probation officer or
2 law enforcement officer, and ordered to obey all laws.

3
4 **SECOND CAUSE FOR DISCIPLINE**

5 **(CONVICTION OF A CRIME)**

6 13. Respondent is subject to disciplinary action under section 2761(a) and (f)
7 in that on or about April 3, 2003, Respondent pled guilty to violating Penal Code section
8 243(b)-Battery on a Police Officer, a misdemeanor, in the case entitled, Superior Court of the
9 State of California, County of Riverside, *People of the State of California v. Georgia Anne*
10 *Whitaker, aka Georgia Anne Kasulka, aka Georgia Anne Marlowe, aka Georgia Anne Tripeit*,
11 Case No. SWM011234. The circumstances are as follows:

12 14. On or about September 4, 2002, Respondent did willfully and unlawfully
13 use force and violence upon an Animal Control Officer, a peace officer, engaged in the
14 performance of his duties. Respondent was ordered to serve 30 days in the county jail.
15 Probation was denied.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(CONVICTION OF A CRIME)**

18 15. Respondent is subject to disciplinary action under section 2761(a) and (f)
19 in that on or about April 3, 2003, Respondent pled guilty to violating Health and Safety Code
20 section 11366.5-Maintain Unlawful Building for Manufacture, Storage or Distribution of a
21 Controlled Substance and Penal Code section 273A(a)-Child Endangerment, felonies, in the case
22 entitled, Superior Court of the State of California, County of Riverside, *People of the State of*
23 *California v. Georgia Anne Whitaker, aka Georgia Anne Kasulka, aka Georgia Anne Marlowe,*
24 *aka Georgia Anne Tripeit*, Case No. SWF001090. The circumstances are as follows:

25 16. On or about September 12, 2002, Respondent maintained an unlawful
26 building for the manufacture, storage or distribution of a controlled substance, to wit:
27 Methamphetamine. Respondent was placed on 4 years formal probation, ordered to serve 360
28 days in the county jail, ordered to pay a fine of \$135.00, ordered not to possess or use any

1 controlled substances, ordered to submit to chemical tests or blood breath urine combination,
2 ordered to submit to search by any probation officer or law enforcement officer, ordered to
3 participate in a counseling rehabilitation program, and ordered to complete a Child Abuser's
4 Program.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(POSSESSION OF A CONTROLLED SUBSTANCE)**

7 17. Respondent is subject to disciplinary action under section 2762(a) in that
8 Respondent pled guilty to violating Health and Safety Code section 11366.5-Maintain Unlawful
9 Building and Penal Code section 273A(a)-Child Endangerment, felonies, in the case entitled,
10 Superior Court of the State of California, County of Riverside, *People of the State of California*
11 *v. Georgia Ann Whitaker, aka Georgia Anne Kasulka, aka Georgia Anne Marlowe, aka Georgia*
12 *Anne Tripeit*, Case No. SWF001090, as set forth in paragraphs 15 and 16 above.

13 **PRAYER**


14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

16 1. Revoking or suspending Registered Nurse License Number 488770 issued
17 to GEORGIA WHITAKER, AKA GEORGIA ANNE MARLOWE.

18 2. Ordering GEORGIA WHITAKER AKA GEORGIA ANNE MARLOWE
19 to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement
20 of this case, pursuant to Business and Professions Code section 125.3;

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 9/30/04

23
24 
25 RUTH ANN TERRY, M.P.H., R.N.
26 Executive Officer
27 Board of Registered Nursing
28 Department of Consumer Affairs
State of California
Complainant